

BAIL SLIP

The Petitioner/Accused viz., Mageshwaran, S/o.Neelakandan be and hereby was directed to be released on bail as per order of this Court dated 11.11.2019 and made in Crl.MP.No.16082 of 2019 in Crl.Rc.No.1207 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.09.2021

PRONOUNCED ON:10.02.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1207 OF 2019

Mageshwaran

...Petitioner/Appellant/
Single Accused

Vs.

State by its
The Sub Inspector of Police,
Chidambaram Taluk Police Station
Chidambaram
Cuddalore District
(Cr.No.65 of 2011)

... Respondent/Respondent/
Complainant

PRAYER:

Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973, to set aside the judgment passed in Criminal Appeal in C.A.No.95 of 2018 dated 18.07.2019 by the II Additional District and Sessions Judge, Chidambaram, Cuddalore District, by confirming the sentence and imprisonment passed in C.C.No.57 of 2012 dated 09.10.2018 by the Judicial Magistrate No.II, Chidambaram.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment passed in Criminal Appeal in C.A.No.95 of 2018 dated 18.07.2019 by the II Additional District and Sessions Judge, Chidambaram, Cuddalore District, by confirming the sentence and imprisonment passed in C.C.No.57 of 2012 dated 09.10.2018 by the Judicial Magistrate No.II, Chidambaram.

2.The respondent police registered a case in Crime No.65 of 2011 for the offence under Sections 482, 486 and 420 IPC and after investigation, laid a charge sheet before the learned Judicial Magistrate No.II, Chidambaram for the offence under Sections 482, 486 and 420 IPC. The learned Magistrate taken the charge sheet on file in C.C.No.57 of 2012 and after completing the formalities, framed the charges against the petitioner for the offence under Sections 482, 486 and 479 IPC.

3.In order to substantiate the case, during the trial on the side of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and 13 documents were marked as Ex.P.1 to Ex.P.13 and 10 material objects were marked as M.O.1 to M.O.10. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses were put before the petitioner/accused, by questioning under section 313 Cr.P.C, they denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence were produced.

4.On completion of trial, after hearing the arguments advanced on either side, the learned Magistrate convicted the petitioner to undergo one year rigorous imprisonment and pay fine of Rs.6,000/- for the offence under Sections 482, 486 and 417 IPC. The petitioner was not guilty for the offence under Section 420 IPC and acquitted him from the said charge. He was convicted and sentenced to undergo one year rigorous imprisonment and pay fine of Rs.2,000/- for each offence and in default to undergo simple imprisonment for further period of one month for the offence under Sections 482, 486 and 417 IPC. Challenging the said judgment of conviction and sentence, the petitioner filed an appeal before the Principal District and Sessions Judge, Cuddalore in C.A.No.95 of 2018 and the same was made over to the case to II Additional District and Sessions Judge, Chidambaram, for final disposal. The learned Sessions Judge, after hearing the arguments advanced on either side, dismissed the appeal and confirmed the judgment of conviction and sentence. Challenging the same, the petitioner has filed the present criminal revision before this Court.

5.The case of the prosecution is that the petitioner herein had impersonated and printed fake labels in the name of Gopal Tooth Powder and manufactured Tooth Powder and sold it in the brand name of Gopal Toot Powder violating the trade mark pattern and reduced the sale of the tooth powder for the past six months prior to the date of lodging complaint on 27.02.2011 in and around Sethiathope, Meensurity and Jeyangkondam in the retail shops. Therefore, he has committed the offence as stated above.

6.The learned counsel appearing for the petitioner would submit that P.W.1 gave a complaint belatedly and the FIR does not contain the date on which it was registered, the head Constable/P.W.7, who has registered the case, has not given any explanation in this regard. FIR reaches the Court, with delay after the registration and no explanation was offered by the prosecution. The trial Court simply convicted the revision petitioner, based on the evidence of P.W.1 and P.W.2. P.W.1 is not owner of the company. The evidence of P.W.8 and P.W.9 are not trust worthy, because the experts have not given any negative findings as against the petitioner. There are material contradictions and the prosecution failed to prove its case beyond all reasonable doubts. The trial Court as well as the appellate Court failed to consider the scope of the offence and the ingredients of the Sections 482, 486 and 478 IPC. The petitioner/accused was rightly acquitted from the offence under Section 420 IPC, but wrongly, convicted the petitioner/accused for the offence under Sections 482, 486 and 417 IPC by the trial Court. The appellate Court also without any application of mind and simply endorsed the view of the trial Court. Hence, the order of the trial Court is liable to be set aside and the revision would be allowed and the revision petitioner has to be acquitted from the above charges.

7.The learned Government Advocate (Crl.side) appearing for the State would submit that the petitioner impersonated and printed the fake labels in the name of Gopal Tooth Powder and manufactured tooth powder and sold it in the brand name of Gopal Tooth Powder, which clearly violated the Trade Mark and Patent Act, and he also caused huge loss to the de-facto complainant and also degraded the reputation of the company in the local area. The de-facto complainant/P.W.1 is working as a Manager in the company as well as the Sales Officer and used to visit in and around place of Chidambaram and other places, which results, he finds some fake Gopal Tooth Powders are being sold in the local shops and he enquired about the same, they informed that the petitioner was found to sell the same and also filed a complaint and subsequently, samples were collected from the shops and the same were sent it along with the original powders to chemical analysis for expert opinion and after completing the chemical analysis, it was found that the substance found in the

fake powder is not the Gopal Tooth Powder, whereas the petitioner labelled the said fake powder in the pocket of Gopal Tooth Powder. Therefore, he has committed the offence under Sections 482, 486 and 417 IPC. The trial Court as well as the appellate Court rightly appreciated the evidence of P.W.1 and P.W.2, the evidence of experts P.W.8 and P.W.9, the sample's report and also the material objects M.O.1 to M.O.8, which clearly shows that the petitioner has committed the above said offence and therefore, there is no merit in the revision and the same is liable to be dismissed.

8. Heard Mr.S.Saravanakumar, learned counsel appearing for the petitioner and Mr.S.Sugendran, learned Government Advocate (Crl.side) appearing for the State and perused the materials placed before this Court.

9. The specific case of the prosecution is that the petitioner/accused has impersonated and printed fake labels in the name of Gopal Tooth Powder and sold it in the brand name of Gopal Tooth Powder, which violated the Trade Mark Patent Act. Therefore, the respondent police registered a case against the petitioner/accused in Crime No.65 of 2011, on 27.02.2011 for the offence under Sections 482, 486 and 420 IPC.

10. In order to substantiate the charges, on the side of the prosecution, totally 11 witnesses were examined and 15 documents were marked. Besides 10 material objects were marked. Out of 11 witnesses, the de-facto complainant was examined as P.W.1, who is the Manager of the said Company and also Sales Officer of the said locality, which false under the jurisdiction of the respondent police. He has clearly deposed that for the past six months from the date of the complaint, there was a huge loss and reduction of sales and therefore, he inspected the said locality and enquired from the local shop, in which, Gopal Tooth Powder is regularly selling from which he came to know that the petitioner was selling the said powder, which shows that the said powder is not original Gopal Tooth Powder, which is a fake one. The petitioner has impersonated and also printed the fake labels in the brand name of Gopal Tooth Powder. Therefore, P.W.1 preferred a complaint. Though there is a delay in filing the complaint, like this nature of the case only the complaint can be given from the date of the knowledge and also it requires some preliminary enquiry and confirmation regarding the preparation of fake powder. Therefore, the delay is not fatal to the case of the prosecution. Since the samples were collected and sent it to the chemical analysis for getting expert opinion. The evidence of P.W.8 and P.W.9 clearly stated that the samples clearly shows that both are not one and the same and both are different. Though some of the witnesses were turned hostile, during the chief examination they have stated about the recovery

and not supported the case during the cross-examination. From the evidence of P.W.1, P.W.2, P.W.8 and P.W.9 and also the material objects and the documents, this Court finds that both the Courts below have rightly appreciated the evidence and convicted the petitioner/accused for the above said charges. This Court does not find any perversity in appreciation of the evidence.

11. Since this Court is a revisional Court and the scope of the revision is very limited, unless this Court finds perversity in appreciation by the Courts below, normally, the revisional Court will not interfere with the decisions of the trial Court as well as the appellate Court, as the trial Court and the appellate Court are the fact finding Courts.

12. In view of the above, this Court does not find any perversity in re-appreciation of evidence and there is no merit in the revision and the same is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District
and Sessions Judge,
Chidambaram,
Cuddalore District.
2. The Judicial Magistrate No.II,
Chidambaram.
3. The Sub Inspector of Police,
Chidambaram Taluk Police Station
Chidambaram
Cuddalore District
4. The Public Prosecutor,
Madras High Court,
Madras.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

CRL.R.C.NO.1207 OF 2019

PA(CO)
PM/21/03/2022